

FAMILY LAW
Professor Laura T. Kessler
Fall 2004

Tues., Thurs., 9:20 - 10:45 a.m., Room 106

Office: Room 236 Phone: 585-9697

email: *kesslerl@law.utah.edu*

Office Hours: By appointment

Administrative Assistant: Cynthia Lane, Secretarial Suite, Second Floor (581-5050)

COURSE MATERIALS

WEISBERG & APPLETON, MODERN FAMILY LAW: CASES AND MATERIALS (2d ed., 2002) ("CB")

WEISBERG & APPLETON, 2004 PROFESSOR'S UPDATE ("CB Supp.")

L.T. Kessler, *Selected Family Law Statutes and Supplementary Readings* ("Supp.")

We will be focusing on chapters 2-4 and 5-7.

SUGGESTIONS FOR FURTHER READING (on reserve)

PAIGE BIGELOW ET AL., FAMILY LAW LITIGATION IN UTAH (NBI 2001)

HOMER H. CLARK, JR., THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES (2d ed. 1988)

Symposium, *Family Law at the End of the Twentieth Century*, 33 FAM. L. QUARTERLY 435 (1999)

COURSE REQUIREMENTS

(1) Class Attendance. You are expected to attend class. If you do not attend class regularly, I may lower your grade or, in egregious cases, bar you from the final exam.

(2) Preparation for and participation in classroom discussion. Your views, regardless of your perspective, are essential components of a successful family law class. Topics covered in family law often evoke vigorous debate; the best classes are naturally those in which students share their views freely with each other. I encourage you to express your views, however unpopular the perspective or sensitive the topic, so long as you do so in a respectful, professional manner. In addition to taking volunteers, I will call on students alphabetically for the first several weeks of the semester until I get to know your names.

(3) Final in-class, open-book written exam, which is scheduled for Wednesday, December 8, at 1:00 p.m. As the semester progresses, I will provide more detailed information on the format and coverage of the exam.

COURSE WEB SITE

I have established a course web site using Westlaw's TWEN service. The syllabus, weekly assignments, and any important notices (*e.g.*, changes to the syllabus, class cancellations) will be posted there.

In order to access the TWEN web page, you will need to register as a class participant over Westlaw. To do so, go to www.lawschool.westlaw.com over the Internet, click the TWEN link, fill in the requested information for first-time TWEN users, sign onto Westlaw using your password, choose University of Utah College of Law from the pull-down list of law schools, and choose Family Law - Kessler. Upon entering the web site for our course, you will see a list of options on the left side, including "Welcome," "Syllabus," and "Weekly Assignments." If you have any technical difficulties accessing the TWEN course page, you can receive assistance by calling 1-800-Westlaw.

NOTABLE SCHEDULE CHANGES

Class will not meet Thursday, September 23, 2004

AMERICANS WITH DISABILITIES ACT ACCOMMODATIONS NOTICE

The University of Utah seeks to provide equal access to its programs, services and activities for people with disabilities. If you will need accommodations in this class, reasonable prior notice needs to be given to Barbara Dickey, Associate Dean of Student Affairs, and to the Center for Disability Services (CDS), to make arrangements for accommodations. CDS is located at 200 S Central Campus Drive (Union Building), Rm. 162, or you can call (801) 581-5020.

All written information in this course can be made available in alternative format with prior notification.

ASSIGNMENTS: We will cover approximately 20 pages per class hour. Weekly reading assignments are posted on TWEN. Please use the assignment sheet as a rough estimate of what we will be covering. Actual presentation of the material will be paced to accommodate class discussion and interest, therefore, don't read too far ahead!

I. Introduction

- A. Family Law Themes/What is a Family
Supp. #1, Victoria M. Mather, *Evolution and Revolution in Family Law*;
CB 397-404, 409-17, 476-79, 483-87 (Notes 1-9)

II. Entering Marriage

- A. Marriage as a Fundamental Right: Constitutionality of State Marriage Restrictions
CB 151-71
- B. Substantive Restrictions: Incest, Bigamy, Age
CB 190-216
- C. State of Mind Restrictions: Fraud, Duress
CB 217-20
- D. Formal Procedural Requirements: Licensure, Solemnization, Blood Tests, Waiting Periods, etc.
CB 222-27, 229-30 (Notes 1-4)
- E. Exceptions to the Formal Requirements/Informal Marriages:
Common Law Marriage and the Putative Spouse Doctrine
CB 234-44
- F. Substantive Restrictions, continued: Same Sex
CB 50-57 (skim *Bowers*); CB Supp. 4-14; CB 171-190 (skim *Baker* and read notes); Supp. #2, Vermont Civil Union Act; CB Supp. 17-30; Utah House Joint Resolution on Marriage (H.J.R. 25) (to be distributed in class)

III. Regulation of the Intact Marriage/Legal Significance of Marriage

- A. The Changing Nature of Marriage
 - 1. The Traditional View
CB 248-54, 279-81
 - 2. Marital Property Rights
CB 255-59

Regulation of the Intact Marriage/Legal Significance of Marriage, cont.

3. The Modern Perspective: Marriage as a Partnership
Supp. #3, *Jersey Shore Med. Ctr.-Fitkin Hospital v. Estate of Baum*

- B. Duty of Support
CB 259-68

- C. Reallocation of Duties within Marriage by Contract

1. During Marriage
Supp. #4, *Borelli v. Brusseau*

2. Before Marriage (Prenuptial Agreements)
CB 136-51; Utah Code §§ 30-8-1 to 30-8-9 (Supp.)

IV. Consensual Alternatives to Marriage: Cohabitation

- A. Introduction
CB 417-24

- B. Cohabitants' Rights *Inter Se*
CB 424-44, 499-502, CB Supp. 39

V. Dissolution of Marriage

- A. Introduction
CB 533-40

- B. Fault Based Grounds: Adultery, Cruelty, and Desertion
CB 540-56

- C. Traditional Defenses: Recrimination, Condonation, Connivance, Collusion, Insanity
CB 556-64

- D. No Fault Divorce

1. Divorce Reform
CB 564-80

2. What Role for Fault: Tort Theories
CB 580-86

3. No Fault Assessment
CB 586-91

VI. Child Custody

A. Introduction

CB 797-99; Custody Chart (available on course web site)

B. Best Interests of the Child/Factors in Disputed Cases

1. Gender/Tender Years Presumption

CB 799-805

2. Comment on the Best Interest Standard

CB 807-10

3. Parental Fitness

a. Careers

CB 827-34

b. Domestic Violence

CB 834-39

c. Physical and Mental Health

CB 839-41

d. Other Miscellaneous Factors: Sexual Conduct of Parent, Cooperative Parent Doctrine, Parental Alienation Syndrome, Family Unity, Criminal Record, Alcohol and Drug Abuse, Educational Needs By Lecture

4. Child's Preference

CB 883-87

C. Reform Efforts/Modern Trends

1. Primary Caretaker Presumption

CB 805-07

2. Joint Custody

CB 841-52

3. Pre-Dissolution Parenting Time

American Law Institute (ALI) Principles of the Law of Family Dissolution [hereinafter ALI Principles], § 2.08 Allocation of Custodial Responsibility (available on course web site)

4. Mediation/Coin Flipping

933-49

D. Modification

CB 899-909, CB Supp. 41; Supp. at Utah Code § 30-33-37, especially provisions amended in 2002 and 2003. *See* explanatory note under section.

VII. Economic Consequences of Divorce

A. Introduction

CB 653-56; Chart Summarizing Property Division Systems (to be distributed in class).

B. Property Division: From Title Theory to Contribution

CB 656-68; ALI Principles, § 4.12 Recharacterization of Separate Property (available on course web site)

C. Spousal Support

CB 668-680; ALI Principles, § 5.04 Compensation for Loss of Marital Living Standard and § 5.05 Compensation for Primary Caretaker's Residual Loss of Earning Capacity (available on course web site)

D. Applying Theories of Property Division and Support

CB 680-94

E. Divorce and "New" Property

a. Pensions and Employee Benefits

CB 706-14

b. Professional Degrees/Earnings

CB 714-24

F. Dividing the Marital Estate

Supp. #5, to be distributed in class

G. Tax Issues

CB 725-30

H. Child Support

1. Introduction/Guidelines

CB 730-40

2. Post-Majority Support

CB 740-745

I. Separation Agreements

CB 787-95